merely a surety of that party to the instrument who has been benefited by the anomalous indorsement, and as assuming, in the capacity of such surety, exactly the same legal responsibility as that of the principal. Such an obligation is known to the French law as an *aval*. Apparently there is no English or American decision in which this French conception has been fully recognized as a *ratio decidendi*, but in *Steele* v. *McKinlay*, 5 Appeal Cases, 754, Mr. Justice Blackburn discusses the doctrine and gives it the authority of his approval. After referring to the principles of regular endorsement, he says: "But I quite agree that, by the custom of merchants as modified by English law, there may also be an indorsement by a person, not a holder of the bill, who puts his name on the bill to facilitate the transfer to a holder. By the old foreign law, not in this respect entirely adopted by the English law, this might be done by what was called an *aval*; . . . and if such an *aval* was given by any one, his obligation to all subsequent holders of the bill was precisely the same as that of the person to facilitate whose transfer the *aval* was given. It appears from Pothier . . . that the *aval* might be made by one who gave his name, either by way of incurring responsibility for the drawer, placing the signature under the name of the drawer, or for the indorser, placing it under the indorsement, or for the acceptor, placing it under that of the acceptance." While, however, this last statement may represent the normal case, the fact that the name of *le donneur d'aval* appears on the back of the instrument, and not directly below that, for instance, of the maker, should make no difference, and in Canada, where the courts have accepted the *aval* theory, this is the law. See *Latour* v. *Gauthier*, 2 Lower Canada Law Jour. 109 (Quebec); *Merritt* v. *Lynch*, 9 Lower Canada Rep. 353 (Montreal).

The *aval* idea seems to have been generally adopted on the Continent; and, while the same result has been partially reached by the English Bills of Exchange Act and by statutes in a few States, as well as by some court decisions, it is believed that effect would be more nearly given to the real intention of the parties, and that more perfect justice would be thereby secured, were this doctrine fully incorporated into our law of negotiable paper.

Locality of Crime. — The Court of Appeals of Kentucky, in the recent case of *Jackson* v. *Commonwealth*, 38 S. W. Rep. 1091, has had to deal with the question of the criminal intent and the locality of crime in a difficult form. In Ohio, the defendants administered cocaine to a young woman, intending serious bodily harm. They brought the apparently lifeless body into Kentucky, and, in order to conceal the crime, cut off the head, believing that she was already dead. But the evidence shows that, until the decapitation, she was alive; and the question is raised whether the crime of murder was committed within the jurisdiction of Kentucky.

The prisoners were convicted; and in sustaining the conviction the court is right, although the reasoning is not entirely satisfactory. The fact that the poison was administered in Ohio offers little difficulty. The girl did not die of the poison; she died from the act of violence which took place in Kentucky. Apart from this, two difficulties are to be met before we reach the same conclusion as the court. The act causing death in Kentucky is present; but to constitute the crime of murder, there must be also the general criminal intent and the malice aforethought. If we can find the crime of homicide, we have the requisite

malice, in its technical significance, from the fact that a dangerous weapon was used. But it is urged that there was no general criminal intent, for the killing was done under a mistake of fact; and, further, that it is impossible to consider what took place in Ohio with reference to the act done in Kentucky. To this there are two answers. In the first place, the act of decapitation itself was criminal, the wanton desecration of a dead body being looked upon as *contra bonos mores;* this alone is sufficient to supply the intent. But even were this not true, the general criminal intent may be supplied constructively from the criminal intent to poison. This is the ground the court takes. As evidence of this intent, acts in another State may be considered. Intent does not depend upon jurisdiction; it is a mental quantity, evidence of which may be received from any part of the globe. And as for the existence of the intent at the time of the killing, it would be a strange anomaly if it were law that the wicked state of a man's mind ceases as soon as he believes in the death of his victim, so that he is not responsible for the actual harm resulting from continued indignities. His particular acts may not accomplish the end he contemplates; but by construction the criminal intent is continuous, until the last step is taken in finishing the crime and in concealing its traces. Therefore, in this way too the general criminal intent existed at the time of the killing; and that intent, together with the "malice" implied from the use of a dangerous weapon, makes the act which was done murder.

This result is sanctioned by justice as well as by logic; for otherwise an atrocious murder, owing to an error in its commission, would be nowhere punishable, — not in Ohio, because the poisoning which took place there did not result in death, — not in Kentucky, because the criminality of the act would be held to have ceased before the death.

THE RIGHT TO FREEDOM OF CONTRACT. — The plaintiff in a recent case in an Ohio Circuit Court, (*Shaver* v. *Pennsylvania Co.*, 71 Fed. Rep. 931,) became a member of a relief association managed by the defendant railway, under an agreement that the acceptance of benefits from it for any disability should bar a suit for damages against the defendant. An Ohio statute made void such a term in the contract of a railway employee. The plaintiff having accepted aid from the association before suing the railway, the court held the statute unconstitutional, and the contract a valid defence.

The Ohio Constitution guarantees the rights of life, liberty, and property, and provides that laws of a general nature shall be uniform in their operation. The court thought the statute obnoxious to both of these provisions, inasmuch as it deprived the plaintiff of liberty to make contracts for his labor, and, being confined to railway employees, was not uniform in its operation.

There are a considerable number of decisions in this country denying the constitutionality of similar legislation. See *Millett* v. *People*, 117 Ill. 294 (1886); *Frorer* v. *People*, 141 Ill. 171 (1892); *Ramsey* v. *People*, 142 Ill. 380 (1892); *Braceville Coal Co.* v. *People*, 147 Ill. 66 (1863); *Comm.* v. *Perry*, 155 Mass. 117 (1891); *Godcharles* v. *Wizeman*, 113 Pa. St. 431 (1886); *State* v. *Loomis*, 115 Mo. 307 (1893); *State* v. *Goodwill*, 33 W. Va. 179 (1889). In all of these cases it is assumed that the constitutional guaranty of "liberty" includes "freedom of contract."